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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,354	02/06/2004	Yoshinari Shirai	1762-000005/US	5036
36/593 7590 03/30/2011 HARNESS, DICKEY & PIERCE, P.L.C. P.O. BOX 8910 RESTON, VA 20195				
EXAMINER				
SPURLOCK, BRETT SHANE				
ART UNIT		PAPER NUMBER		
3742				
MAIL DATE		DELIVERY MODE		
03/30/2011		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/772,354

**Applicant(s)**

SHIRAI ET AL.

**Examiner**

BRETT SPURLOCK

**Art Unit**

3742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 12-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-2, 12-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-SB08)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2 and 12-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakagawa et al (US 6029563 A).

Nakagawa discloses a cooking apparatus to be used as an automatic bread making apparatus where: a housing (A); a container receivable in the housing (7 and/or 8) into which breadmaking ingredients are fed; a stirrer (12-13 and/or 71 and/or 82) for stirring the breadmaking ingredients fed in the container; a stirring control section (113) for controlling an operation of the stirrer; a temperature control section (114) for controlling temperature in the container; and a central control section (11) for controlling the stirring control section and the temperature control section in accordance with a breadmaking sequence using rice flour wherein when using breadmaking ingredients containing rice flour, the breadmaking ingredients containing the rice flour is mixed before kneading the breadmaking ingredients and the rice flour is mixed before kneading the breadmaking ingredients (col. 1, lines 9-11), wherein the central control section is configured to control the stirring control section and the temperature control section to mix bread-making ingredients containing rice flour by stirring the breadmaking ingredients for a shorter time than at kneading the breadmaking ingredients performed

after mixing the breadmaking ingredients to promote the rice flour to hydrate without raising the viscosity of the breadmaking ingredients, and wherein the stirrer includes a blade (Fig. 2; 17) mounted on a bottom of the d and a rotating member (12-13 and/or 71 and/or 82) for rotating the blade, and the central control section (11) is further configured to cause the stirring control section to execute such a control that the number of revolutions of the blade per given time is smaller at mixing the breadmaking ingredients to ensure that powdery components are prevented from flying.

### ***Response to Arguments***

In response to applicant's argument that "there is no disclosure or suggestion that the central control section controls a breadmaking sequence using rice flour", a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is substantially identical as that of the recited structure, the prior art is capable of performing the intended use. See MPEP 2112. Furthermore, the crux of applicant's arguments as well as newly added claims 12 and 13 also pertain to the specific process which the claimed invention is said to control; however, the issue remains that the structural differences have not been delineated from the prior art. All of the claimed structural limitations have been addressed in the instant office action. It is also noted that the manner of operating the device does not differentiate apparatus claim from the prior art.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRETT SPURLOCK whose telephone number is (571)270-1387. The examiner can normally be reached on M-TH, M-F, 8:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tu Hoang can be reached on 5712724780. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRETT SPURLOCK/  
Examiner, Art Unit 3742  
3/24/2011

/SANG Y PAIK/  
Primary Examiner, Art Unit 3742